

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**JOSHUA E. CHAVIS,**  
**Petitioner,**

**v.**

**HAROLD W. CLARKE,**  
**Respondent.**

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**Civil Action No. 7:21cv00323**

**MEMORANDUM OPINION**

**By: Robert S. Ballou**  
**United States Magistrate Judge**

Joshua E. Chavis, a Virginia inmate proceeding pro se, has filed a motion requesting appointment of counsel and an evidentiary hearing in this proceeding filed under 28 U.S.C. § 2254. For the reasons set forth below, this motion will be denied without prejudice.

Chavis' § 2254 petition alleges ineffective assistance of counsel and that he has exhausted his claims by filing a petition for habeas corpus relief in the Supreme Court of Virginia. Under the law, this court must defer to the state court decision unless that decision is contrary to federal law as determined by the United States Supreme Court or is an unreasonable application of that law. 28 U.S.C. § 2254(d)(2). Further, the state court's factual determinations are entitled to a presumption of correctness and cannot be disturbed by this court unless the state court's decision was based upon an unreasonable determination of facts in light of the evidence presented to that court. 28 U.S.C. § 2254(e).

At this point in time, the respondent's answer to the petition has not yet been filed, nor is it yet due. Neither has this court yet received the record of evidence presented in the state habeas case. Until such time as the court has had the opportunity to receive and review the respondent's answer and the proceedings below, the court cannot determine whether an evidentiary hearing is necessary and justified. Until such time as the matter is ripe for decision on the issue, the court will deny the motion for an evidentiary hearing without prejudice.

Likewise, although the court has discretion to appoint counsel to assist the defendant with a § 2254 case when the interests of justice so require, the request is premature at this time. If this matter is scheduled for an evidentiary hearing, petitioner may renew his motion to appoint counsel. Unless and until that time, the motion for counsel will be denied without prejudice.

The Clerk is directed to send a copy of this Opinion and the accompanying order to the petitioner.

Enter: September 13, 2021

*/s/ Robert S. Ballou*

Robert S. Ballou  
United States Magistrate Judge